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24 Debtors and Debtors in Possession*

25 **UNITED STATES BANKRUPTCY COURT
26 EASTERN DISTRICT OF WASHINGTON**

27 In re

28 EASTERDAY RANCHES, INC., *et al.*

29 Debtors.¹

30 Chapter 11

31 Lead Case No. 21-00141-11
32 Jointly Administered

33 **NOTICE AND MOTION OF DEBTORS
34 FOR THE ENTRY OF AN ORDER
35 AUTHORIZING AND APPROVING THE
36 COOPERATION AGREEMENT WITH
37 THE NON-DEBTOR SELLERS;
38 MEMORANDUM OF POINTS AND
39 AUTHORITIES**

40 _____
41 ¹ The Debtors along with their case numbers are as follows: Easterday Ranches, Inc. (21-00141) and
42 Easterday Farms, a Washington general partnership (21-00176).

43 DOCS_NY:42662.4 20375/001

44 **MOTION FOR ORDER AUTHORIZING AND
45 APPROVING COOPERATION AGREEMENT –**

46 Page 1

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1 **PLEASE TAKE NOTICE** that Easterday Ranches, Inc., and Easterday Farms,
2 as debtors and debtors in possession in the above-captioned chapter 11 cases (the
3 “Debtors”), hereby file this notice and *Motion of Debtors for the Entry of an Order*
4 *Authorizing and Approving the Cooperation Agreement with the Non-Debtor Sellers*²
5 (the “Motion”).

6 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this
7 Notice and Motion, the arguments of counsel, and any other admissible evidence
8 properly brought before this Court at or before the hearing on his Motion.

9 **PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will be
10 held on **April 28, 2021 at 2:00 p.m. (Pacific Time)** by telephone as set forth below.

11 **PLEASE TAKE FURTHER NOTICE** that, pursuant to court orders
12 responding to the COVID-19 pandemic, any party that wishes to address the
13 court, or appear without addressing the court, must appear by telephonic
14 appearance. The telephone conference call-in number is (877) 402-9757, Access
15 Code: 7036041.

16 Dated: March 26, 2021

BUSH KORNFELD LLP

17 /s/ Thomas A. Buford

18 THOMAS A. BUFORD, III (WSBA 52969)
19 BUSH KORNFELD LLP

20 RICHARD M. PACHULSKI (admitted *pro hac vice*)
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23 PACHULSKI STANG ZIEHL & JONES LLP

24 *Attorneys for the Debtors and Debtors in Possession*

25

² The “Non-Debtor Sellers” are Cody Easterday, Debby Easterday, Karen Easterday (in
26 her individual capacity and as representatives of the estate of Gale Easterday).

27 DOCS_NY:42662.4 20375/001

28 **MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –**
Page 2

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RELIEF REQUESTED

15 In support of this Motion, the Debtors submit the Declaration of T. Scott Avila,
16 Co-Chief Restructuring Officer of the Debtors, filed concurrently herewith. In further
17 support of the Motion, the Debtors respectfully represent as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

JURISDICTION AND VENUE

20 The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
21 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper
22 pursuant to 28 U.S.C. §§ 1408 and 1409.

23 The statutory predicates for the relief sought herein are sections 105 and 363(b)
24 of the Bankruptcy Code and Bankruptcy Rule 6004.

¹ The Non-Debtor Sellers are also the general partners of Farms.

1

BACKGROUND

2

A. Background

3 On February 1, 2021 (the “Ranches Petition Date”), Ranches filed a voluntary
4 petition for relief under chapter 11 of the Bankruptcy Code before this Court.

5 On February 8, 2021 (the “Farms Petition Date,” together with the Ranches
6 Petition Date, the “Petition Dates”), Farms also filed a voluntary petition for relief
7 under chapter 11 of the Bankruptcy Code before this Court.

8 The Debtors continue to operate and manage their business and affairs as
9 debtors in possession in their chapter 11 cases pursuant to sections 1107 and 1108 of
10 the Bankruptcy Code.

11 On February 16, 2021, the Office of the United States Trustee (the “U.S.
12 Trustee”) appointed the following creditors to the Ranches Official Committee of
13 Unsecured Creditors, as amended [Docket Nos. 152, 154, and 155] (the “Ranches
14 Committee”): (i) J.R. Simplot; (ii) Alto Nutrients; and (iii) Animal Health
15 International.

16 On February 22, 2021, the U.S. Trustee appointed the following creditors to the
17 Farms Official Committee of Unsecured Creditors, as amended [Docket Nos. 187, and
18 188] (the “Farms Committee” and together with the Ranches Committee, the
19 “Committees”): (i) Labor Plus Solutions, Inc.; (ii) The McGregor Company; (iii) John
20 Deer Financial; (iv) Dykman Electrical Inc.; (v) Two Rivers Terminal; and (vi) Frank
21 Bushman.

22 Additional information about the Debtors’ historical business operations, capital
23 structure, and the events leading up to the commencement of these chapter 11 cases, is
24 set forth in the *Declaration of T. Scott Avila in Support of First Day Motions* [Docket
25 No. 93], which is incorporated herein by reference.

26

27 DOCS_NY:42662.4 20375/001

28 MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –
Page 4

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1 **B. The Debtors' Business Operations and the Properties**

2 The Debtors operate commercial farming and ranching operations which
3 require significant acreage to accommodate the Debtors' expansive operations. In this
4 regard, the Debtors' operations span approximately 22,500 acres over multiple farms,
5 lots/ranches, and other complexes and facilities, which are generally referred to by
6 their common names: (i) Goose Gap Farm, (ii) River Farm, (iii) Nine Canyon Farm,
7 (iv) Cox Farm, and (v) a storage complex (the "Storage Complex") on River Farm
8 (collectively, the "Sale Properties"). The Sale Properties consist of approximately 81
9 parcels, all of which are located in Benton County, Washington and are owned,
10 leased, or otherwise utilized, in whole or in part by the Debtors. As described more
11 fully below, title to the property is held by (i) Ranches with respect to Nine Canyon
12 Farm, (ii) Farms with respect to the Storage Complex, (iii) Farms and the Non-Debtor
13 Sellers with respect to River Farm, (iv) Ranches, Farms and the Non-Debtor Sellers
14 with respect to Cox Farm, and (v) the Non-Debtor Sellers with respect to Goose Gap
15 Farm.² (Avila Dec. ¶ 8). A more detailed description of the Properties follows:

16 **1. Goose Gap Farm**

17 Goose Gap Farm comprises approximately 6,300 acres, and includes, among
18 other things, pivot irrigated farmland, dry pasture land, and a pump house. Goose Gap
19 Farm also includes additional leasehold acreage. Title to Goose Gap Farm is held in
20 the names of Gale, Karen, Cody and Debby Easterday, as 100% owners. Goose Gap
21 Farm is subject to a lien asserted by Prudential Insurance Company of America

22

23 ² The Debtors are analyzing information relating to the state of title to each of the Sale
24 Properties and any ownership percentages referred to herein are solely for illustrative
25 purposes; accordingly, they should not be construed as an admission or position with
26 respect to same. All rights of all parties are expressly reserved with respect to any
 ownership issues or competing claims with respect thereto.

1 (“Prudential”), securing an obligation in the asserted principal amount of
2 approximately \$49 million (the “Prudential Mortgage”).

3 **2. River Farm**

4 River Farm comprises approximately 5,800 acres and includes, among other
5 things, an approximately 8,400 square foot shop, storage facilities with an
6 approximate capacity of 95,000 bushels of grain, and three manufactured homes.
7 River also includes additional leasehold acreage. Title to River Farm is held in the
8 names of Farms and Gale, Karen, Cody and Debby Easterday, with Farms owning
9 0.7% and Gale, Karen, Cody and Debby Easterday owning 99.3%. River Farm is
10 subject to the Prudential Mortgage.

11 **3. Nine Canyon Farm**

12 Nine Canyon Farm comprises approximately 3,000 acres, and includes, among
13 other things, a grape vineyard, cherry orchard, 40,000 square feet of storage facilities,
14 including the facilities suitable to hold 5,000 tons of potatoes, four manufactured
15 homes, and a mobile home park with six mobile homes. Title to Nine Canyon Farm is
16 held in the name of Ranches, as 100% owner. Nine Canyon Farm is subject to the
17 Prudential Mortgage.

18 **4. Cox Farm**

19 Cox Farm comprises approximately 7,500 acres, and includes, among other
20 things, feedlot facilities capable of housing and feeding approximately 35,000 head of
21 cattle, pivot irrigated farmland, a 4,300 square foot horse barn, and a 2,500 square foot
22 residence. Cox also includes additional leasehold acreage, a steel dry commodity and
23 hay storage shed, and nearly 67,000 square feet of storage facilities, including
24 facilities to store over 5,200 tons of onions, 175,000 bushels of dry grain, 30,000 tons
25 of high moisture corn, as well as an additional 30,000 tons of silage storage. Title to
26 Cox Farm is held in the names of Ranches, Farms and Gale, Karen, Cody and Debby

27 DOCS_NY:42662.4 20375/001

28 **MOTION FOR ORDER AUTHORIZING AND
 APPROVING COOPERATION AGREEMENT –**
 Page 6

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1 Easterday, with Ranches owning 66.1%, Farms owning 7.1% and Gale, Karen, Cody
2 and Debby Easterday owning 26.8%. Cox Farm is subject to a lien asserted by AXA
3 Equitable, securing an obligation in the asserted principal amount of approximately
4 \$25.5 million.

5. **The Storage Complex**

6 Title to the Storage Complex is held in the name of Farms, as 100% owner.
7 The Storage Complex is subject to a lien asserted by LTM Investments, securing an
8 obligation in the principal amount of approximately \$638,000.

9 **C. Debtors' Efforts to Sell the Sale Properties**

10 Contemporaneously herewith, the Debtors filed a motion seeking approval
11 of bidding procedures and a process for selling the Sale Properties. The Debtors
12 submit that a sale of the Sale Properties will maximize the value of these estates and
13 the recoveries of their creditors.

14 Though the Storage Complex and Nine Canyon Farm (the “Debtor Properties”)
15 are owned by Debtors, the Non-Debtor Sellers, Farms and Ranches own separate
16 parcels of real property contained within the larger boundaries of Cox Farm and River
17 Farm (the “Joint Properties”). Goose Gap Farm, which is adjacent to or connected
18 with the Joint Properties and/or the Debtors Properties, is owned by the Non-Debtor
19 Sellers (the “Non-Debtor Property”).

20 Because of the location and relationship of the Sale Properties, it is critical that
21 Debtors are able to market and sell all of the Sale Properties in one sale process.
22 Doing so will maximize value for all of the Debtors’ stakeholders, and conversely, the
23 failure to do so would have a material negative impact on the proceeds that could be
24 realized from the sale of only the Debtor Properties. *Avila Decl.*, ¶ 11.

25 The inter-relationship between the Non-Debtor Sellers (who are also the general
26 partners of Farms) and the Debtors, the ownership of individual parcels making up the

27 DOCS_NY:42662.4 20375/001

28 **MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –**

Page 7

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1 boundaries of the Joint Properties and the interrelationship of the businesses and
2 activities conducted on the Sale Properties, including among other things, water
3 delivery systems, create complicated issues, including allocation and application of
4 proceeds, that are more appropriately addressed in a sale process that incorporates all
5 of the Sale Properties. The Debtors and Non-Debtor Sellers agree through the
6 Cooperation Agreement that those complicated issues should not delay or hinder the
7 effort to sell the Sale Properties. Rather, the parties to the Cooperation Agreement
8 agree to work together to maximize the value of the sale and then determine how the
9 resulting proceeds should be allocated and the resolution of claims among the parties.

10 *Id.* ¶¶ 9-10.

11 Without the cooperation of the Non-Debtor Sellers, the Debtors would be in a
12 position to only sell the Debtor Properties. Even then, given water rights on the
13 Debtor Properties and proximity to the Non-Debtor Properties, selling only the Debtor
14 Properties will have a material negative effect on the sale of other parcels owned by
15 the Debtors and ultimately on total value received by the Debtors' estates. Moreover,
16 even if a later agreement were ultimately reached with respect to the sale of the Joint
17 Properties and/or the Non-Debtor Properties, the failure to market and sell them
18 together would materially impair their value. Thus, Debtors submit that entry into the
19 Cooperation Agreement and the sale of the Sale Properties and later determination of
20 any allocation issues is in the best interests of these estates. *Id.* ¶¶ 11, 13.

21 **D. The Cooperation Agreement**

22 The proposed agreement between the parties is encompassed in the Cooperation
23 Agreement, the material terms of which are as follows:³

24

25 ³ This summary is provided for convenience and is qualified by and subject to the
26 terms as set forth in the Cooperation Agreement. Parties should refer to Cooperation
Agreement for complete terms.

1	Parties	Debtors and Non Debtor Sellers
2	Sale Properties	(i) Goose Gap Farm, (ii) River Farm, (iii) Nine Canyon Farm, (iv) Cox Farm, and (v) the Storage Complex.
3	Sale Process/ Cooperation of Non- Debtor Sellers	<p>The Bidding Procedures will establish a process for Debtors to determine the highest and best offer for the Sale Properties (including for individual Sale Properties or groups of Sale Properties) and for entering into transactions for the sales with respect to the Sale Properties (each a "<u>Sale Transaction</u>").</p> <p>To the extent that, pursuant to and in accordance with the Bidding Procedures, the Bankruptcy Court enters an order approving any Sales Transaction, any of the Non-Debtor Sellers with an interest in such Sale Property or Sale Properties (each a "<u>Selling Party</u>") agrees to cooperate with any such Sale Transaction, including but not limited to, taking any action and entering into and executing any documentation with respect to such Sale Transaction necessary to relinquish any ownership rights in such Sale Property and to provide the buyer with clean title to such Sale Property. Each Non-Debtor Seller shall also execute a power of attorney providing either or both of the Debtors' Co-Chief Restructuring Officers (as Debtors shall deem appropriate) with authority to execute any and all agreements or other documents necessary for the sale and transfer of such Sale Property including, but not limited to grants, deeds, mortgage reconveyances, or other documents of transfer necessary to effectuate any Sale Transaction on behalf of such Non-Debtor Seller.</p> <p>The Non-Debtor Sellers shall retain the right to object to any proposed Sales Transaction, except that no such objection shall be based on any argument that Debtors may not sell a Sale Property, and any such objection shall be resolved by the Bankruptcy Court, and each Non-Debtor Seller agrees to be bound by any resolution of the Bankruptcy Court of such objection and hereby waives any right to appeal such order of the Bankruptcy Court</p>
25	Distribution of Sale Proceeds	The Proceeds of any Sales Transaction (the " <u>Sale Proceeds</u> ") shall be distributed as follows:

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28 MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –
Page 9

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	<p>First, to the applicable Mortgagee for such Sale Property in satisfaction of the obligations owed to such Mortgagee that are secured by the applicable mortgage (the “<u>Mortgagee Amounts</u>”), <i>provided however</i>, that to the extent that any party has filed a challenge (a “<u>Mortgage Challenge</u>”) with respect to the amount, validity, perfection or priority of any lien asserted by a Mortgagee prior to the closing of the applicable Sales Transaction, then the undisputed portion (if any) of the Mortgagee Amounts shall be distributed to the Mortgagee, and the disputed portion of the Mortgagee Amounts with respect to such Mortgagee shall be placed in an escrow account (on terms and conditions reasonably agreed by Debtors and such Mortgagee) pending a final order of the Bankruptcy Court with respect to such Mortgage Challenge;</p> <p>Second, to the applicable party for the payment of transaction costs (the “<u>Transaction Costs</u>”) relating to such Sale Transaction (including, but not limited to, break-up fees, costs and expenses) approved by the Bankruptcy Court as part of the Bid Procedures or in conjunction with the Sale Transaction;</p> <p>and</p> <p>Third, any remaining Sale Proceeds after funding the Transaction Costs and Mortgagee Amounts (the “<u>Net Sale Proceeds</u>”), shall be deposited in an escrow account pursuant to an escrow agreement, the terms of which shall be negotiated and agreed by all the Parties, in each case acting reasonably (the “<u>Escrow Account</u>”).</p> <p>In no case shall there be any distribution from the Escrow Account in advance of either (A) an order of the Bankruptcy Court approving a stipulation of all of the Selling Parties relating to the allocation of the Sale Proceeds and the distribution of Sale Proceeds in accordance with such allocation, or (B) an Order of the Bankruptcy Court following a motion and hearing regarding allocation of the Net Sale Proceeds.</p>
Development of Allocation Protocol	The Parties shall, as soon as reasonably practicable following the execution of this Stipulation, negotiate in good faith and attempt to reach agreement on a timely basis on a protocol for resolving disputes

	<p>1 concerning the allocation of Net Sale Proceeds from 2 Sale Transactions (the “Allocation Protocol”), 3 which Allocation Protocol shall provide procedures 4 for determining allocation of Net Sales Proceeds 5 where the Selling Parties in such Sale Transaction 6 have been unable to reach agreement regarding such 7 allocation with any allocation determination being 8 subject to approval by the Bankruptcy Court. The 9 Debtors will include the Committees, the 10 Mortgagees and the Enjoined Parties in such 11 negotiations but the consent of those parties shall 12 not be required for Debtors’ agreement with the 13 Non-Debtor Sellers with respect to any Allocation 14 Protocol, <i>provided further</i>, that any Allocation 15 Protocol shall be subject to approval by the 16 Bankruptcy Court upon notice and hearing, and the 17 rights of the Parties, the Debtors, the Committees, 18 the Mortgagees and the Enjoined Parties shall all be 19 reserved with respect to any proposed Allocation 20 Protocol. The Parties further agree that the 21 Allocation Protocol will provide, among other 22 things, that any adjudication of the allocation of Net 23 Proceeds will be made exclusively by the 24 Bankruptcy Court and each Non-Debtor Seller 25 agrees to be bound by the Bankruptcy Court’s order resolving the allocation dispute.</p>
14 15 16 17 18	Maintenance of Sale Properties Pending Sale Pending the sale of any of the Sale Properties, the Party or Parties currently responsible for the maintenance of such Sale Property, including payment of any taxes, insurance or other expenses relating to such Property shall remain responsible for the maintenance of such Sale Property in the same manner and proportion as prior to execution of the Cooperation Agreement.
19 20 21 22 23 24 25	<p>Entry into Stipulation is Without Prejudice Nothing in the Cooperation Agreement shall prejudice the rights of any Party or otherwise constitute an amendment, modification or waiver of the rights of any Party to assert such party’s interests in the Net Sale Proceeds from any Sale Transaction.</p> <p>Nothing in the Cooperation Agreement shall prejudice or impair the rights of any Party with respect to any claim or cause of action against any other Party or the defenses and/or counterclaims of</p>

26
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28 MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –
Page 11

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	<p>any Party with respect thereto.</p> <p>Nothing in the Cooperation Agreement shall prejudice or impair the rights of any Mortgagee Parties and any valid and properly perfected liens of any Mortgagee Party in any of the Sale Properties. Any such liens shall attach to the Sale Proceeds relating to the sale of such Sale Property with the same validity and priority as of the date of such Sale Transaction, <i>provided, however,</i> nothing in the Cooperation Agreement shall prejudice the rights of any Party to challenge the validity, perfection or priority of any lien asserted by a Mortgagee Party and any and all defenses of such Mortgagee Party are also reserved.</p>
Non-Debtor Sellers Not to Transfer Other Assets	<p>The Non-Debtor Sellers agree that for so long as the Cooperation Agreement is in effect, the Non-Debtor Sellers shall not transfer or otherwise lease or encumber <i>any</i> of the Sale Properties except as expressly provided in the Cooperation Agreement. The Non-Debtor Sellers also agree that for so long as the Cooperation Agreement is in effect, the Non-Debtor Sellers shall not, without the prior-written consent, which consent will not be unreasonably withheld, of the Debtors, transfer or otherwise lease or encumber <i>any</i> of their other material assets or properties (for purposes of the Cooperation Agreement, “material” means assets or properties having a fair market value equal to or greater than \$50,000.00), outside of the ordinary course of business (a “<u>Non-Debtor Seller Transaction</u>”).</p> <p>As set forth more fully in the Cooperation Agreement, the Debtors are consenting to certain Non-Debtor Seller Transactions as part of the Cooperation Agreement.</p>

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**MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –**
Page 12

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	<p>If the Non-Debtor Sellers breach this obligation, then the injunction with respect to certain parties described below shall be terminated.</p>
<p>Injunction against Certain Parties</p>	<p>In exchange for the cooperation the Non-Debtor Sellers with respect to the sale of the Sale Properties through the Bankruptcy Cases as contemplated in the Cooperation Agreement, as a condition to the effectiveness of the Cooperation Agreement, the Debtors agree to obtain, either through stipulation with the Enjoined Parties (as defined in the Cooperation Agreement), or an order of the Bankruptcy Court with respect to the Enjoined Parties, an agreement or injunction, respectively, prohibiting the Enjoined Parties from taking certain Enjoined Actions (as defined in the Cooperation Agreement) with respect to assets or property of any of the Non-Debtor Sellers pursuant to Sections 362 and 105 of the Bankruptcy Code.</p> <p>Debtors will use reasonable efforts to obtain a similar stipulation or injunction against any other party that seeks to take any Enjoined Action with respect to the property or assets of any Non-Debtor Sellers, or, before or at the time of the hearing on approval of the Cooperation Agreement, the Debtors may seek an injunction that more broadly protects the Non-Debtor Sellers with respect to actions by their creditors, and the Debtors' failure to obtain such injunction, including the denial of a request for such an injunction by the Bankruptcy Court, shall be a breach of the Stipulation and, on written notice to the Debtors (including via electronic mail), the Non-Debtor Sellers may terminate their continued</p>

DOCS_NY:42662.4 20375/001

MOTION FOR ORDER AUTHORIZING AND APPROVING COOPERATION AGREEMENT –
Page 13

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	<p>1 performance thereunder.</p> <p>2</p> <p>3 Notwithstanding the above, such injunction shall not</p> <p>4 prohibit the Debtors or the Committees from</p> <p>5 seeking reasonable informal or formal discovery in</p> <p>6 the Bankruptcy Cases pursuant to Bankruptcy Rule</p> <p>7 2004 with respect to any Non-Debtor Sellers subject</p> <p>8 to the rights of such Non-Debtor Sellers to object to</p> <p>9 such discovery.</p>
Termination	<p>10</p> <p>11 The Cooperation Agreement will terminate upon the</p> <p>12 earlier of (i) the effective date of any confirmed plan</p> <p>13 of reorganization or liquidation in the Bankruptcy</p> <p>14 Cases, (ii) August 31, 2021 if no Sale Transaction is</p> <p>15 approved by the Bankruptcy Court prior to such</p> <p>16 date, or (iii) December 31, 2021.</p>

13 **RELIEF REQUESTED**

14 By this Motion, pursuant to sections 105 and 363(b) of the Bankruptcy Code

15 and Bankruptcy Rule 6004, the Debtors request the entry of an order, substantially in

16 the form of **Exhibit B** attached hereto, authorizing the Debtors to enter into and honor

17 the Cooperation Agreement.

18 **BASIS FOR RELIEF REQUESTED**

19 **A. The Cooperation Agreement is a Sound Exercise of the Debtors' Business**

20 **Judgment**

21 Section 363 of the Bankruptcy Code provides, in relevant part, that a debtor in

22 possession "after notice and a hearing, may use, sell or lease, other than in the

23 ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Under

24 applicable case law throughout the country, if a debtor's proposed use of its assets

25 pursuant to section 363(b) of the Bankruptcy Code represents a reasonable business

26

27 DOCS_NY:42662.4 20375/001

28 **MOTION FOR ORDER AUTHORIZING AND**
APPROVING COOPERATION AGREEMENT –
Page 14

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1 judgment on part of the debtor, such use should be approved. *See, e.g., In re Equity*
2 *Funding Corp. of Am.*, 519 F.2d 1274, 1277 (9th Cir. 1975); *In re Claar Cellars LLC*,
3 Nos. 20-00044-WLH11, 20-00045-WLH11, 2020 Bankr. LEXIS 682, at *9 (Bankr.
4 E.D. Wash. Mar. 13, 2020) (the business judgment standard “is a ‘deferential’
5 standard pursuant to which a ‘bankruptcy court will generally approve’ a reasoned
6 decision by the debtor.”) (citations omitted); *Myers v. Martin (In re Martin)*, 91 F.3d
7 389, 395 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933
8 F.3d 513, 515 (7th Cir. 1991); *In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 176
9 (Bankr. D. Del. 1991) (courts have applied the “sound business purpose” test to
10 evaluate motions brought pursuant to section 363(b)); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488
11 A.2d 858, 872 (Del. 1985)) (“[T]he business judgment rule is a ‘presumption that in
12 making a business decision the directors of a corporation acted on an informed basis,
13 in good faith and in the honest belief that the actions were in the best interests of the
14 company.’”).

15 Where, as here, the requested relief necessarily involves insiders, Courts will
16 apply a heightened standard in reviewing the transaction. “When the transaction
17 involves or will benefit an ‘insider’ of the debtor, however, bankruptcy courts must
18 apply a heightened level of scrutiny to ensure the insider is not improperly benefitting
19 from its control, access, or familiarity at the expense of outside stakeholders.” *In re*
20 *Claar Cellars LLC*, 2020 Bankr. LEXIS 682, * 9 (Bankr. E.D. Wash. March 13, 2020)
21 (citations omitted); *In re Family Christian, LLC*, 533 B.R. 600, 622 (Bankr. W.D.
22 Mich. 2015) (applying heightened scrutiny to the court’s evaluation of “the fairness of
23 the value provided by the sale and the good faith of the parties in executing the
24 transaction” when a sale that benefited an insider); *In re WK Lang Holdings, LLC*, No.
25 13-11934, 2013 Bankr. LEXIS 5224, at *22 (Bankr. D. Kan. Dec. 11, 2013) (“While

26 DOCS_NY:42662.4 20375/001

27 MOTION FOR ORDER AUTHORIZING AND
28 APPROVING COOPERATION AGREEMENT –
Page 15

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1 sales to fiduciaries are not per se prohibited, they should be carefully examined for
2 fraud or collusion.”)

3 Additionally, the court’s general equitable powers codified in section 105(a) of
4 the Bankruptcy Code provide ample authority for the relief requested herein. Section
5 105(a) of the Bankruptcy Code empowers the court to “issue any order, process, or
6 judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. §
7 105(a). *See also United States v. Energy Resources Co.*, 495 U.S. 545, 549 (1990);
8 *Pac. Shores Dev., LLC v. At Home Corp. (In re At Home Corp.)*, 392 F.3d 1064, 1070
9 (9th Cir. 2004) (acknowledging equitable powers of bankruptcy courts pursuant to
10 section 105(a) of the Bankruptcy Code); *In re Continental Airlines*, 203 F.3d 203, 211
11 (3d Cir. 2000) (“Section 105(a) of the Bankruptcy Code supplements courts’
12 specifically enumerated bankruptcy powers by authorizing orders necessary or
13 appropriate to carry out provisions of the Bankruptcy Code.”).

14 The paramount goal in any proposed sale of property of the estate is to
15 maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*,
16 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the
17 Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R.
18 at 659 (“It is a well-established principle of bankruptcy law that the. . . [trustee’s] duty
19 with respect to such sales is to obtain the highest price or greatest overall benefit
20 possible for the estate.”) (quoting *In re Atlanta Packaging Prods.*, Inc., 99 BR. 124,
21 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s estate,
22 court approval of a trustee’s decision to sell should only be withheld if the trustee’s
23 judgment is clearly erroneous, too speculative or contrary to the provisions of the
24 Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R.
25 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005);
26 *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991) (“The trustee has ample

27 DOCS_NY:42662.4 20375/001

28 MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –
Page 16

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1 discretion to administer the estate, including authority to conduct public or private
2 sales of estate property. Courts have much discretion on whether to approve proposed
3 sales, but the trustee's business judgment is subject to great judicial deference.”).

4 Applying section 363, the proposed Cooperation Agreement should be
5 approved. As set forth above, the Debtors have determined that the best method of
6 maximizing the recovery of the Debtors' creditors would be through the Sale of the
7 Assets. Without the Cooperation Agreement, the Debtors would be restricted to
8 selling assets in which only they have an interest; however, the interrelationship of
9 the Sale Properties makes the separation of the Debtor Properties from the Non Debtor
10 Properties challenging and it would significantly diminish the value of the Debtor
11 Properties. Further, the Debtors believe that the value their estates—and, thus, the
12 Debtors' creditors—will receive from the Sale of the Sale Properties in a coordinated,
13 efficient and collective process will far exceed any value the Debtors' estates could
14 obtain for the Debtor Properties standing alone or if the Debtors are required to
15 liquidate their assets piecemeal. As assurance of value, bids will be tested through an
16 auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy
17 Rules, and pursuant to any bidding procedures approved by the Court.

18 Moreover, the insider status of the Non-Debtor Sellers does not change the
19 outcome. Indeed, contrary to “benefiting” from their status as insiders to the
20 detriment of the Debtors' creditors, without the cooperation and efforts expended by
21 the Non-Debtor Sellers, the Debtors' estates would be negatively impacted by a
22 disjointed, inefficient and diminished sale process.

23 The Debtors submit that entry into the Cooperation Agreement and any use of
24 estate property contemplated thereunder is supported by the Debtors' sound exercise
25 of its business judgment and is appropriate based on the facts and circumstances of
26 this case. The Cooperation Agreement will provide significant and material benefit to

27 DOCS_NY:42662.4 20375/001

28 **MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –**

Page 17

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1 these estates while reserving Debtors' and the other parties' rights with respect to any
2 ultimate allocation of the sale proceeds.

3 The Debtors have shared drafts and engaged in discussions regarding the
4 Cooperation Agreement with the Committees, Washington Trust Bank, Tyson Fresh
5 Meat, Inc., Prudential Insurance Company of America and certain other stakeholders,
6 and will continue to work those and other interested parties in advance of the hearing
7 in an effort to resolve any objections or issues relating to the Cooperation Agreement.

8 Thus, the Debtors urge the Court to approve the Cooperation Agreement.

9 **B. Waiver of Any Applicable Stay**

10 The Debtors also requests that the court waive any stay imposed by Bankruptcy
11 Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of
12 property other than cash collateral is stayed until the expiration of 14 days after entry
13 of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As
14 described above, the relief sought in this Motion will preserve value for the Debtors’
15 estates. Accordingly, the Debtors request that the court waive the 14-day stay
16 imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein
17 justifies immediate relief.

18 **RESERVATION OF RIGHTS**

19 Nothing in the proposed order or this Motion (i) is intended nor does it
20 constitute any agreement or an admission as to the validity of any claim against the
21 Debtors and their estate, or (ii) may impair, prejudice, waive, or otherwise affect the
22 rights of the Debtors and their estates with respect to the validity, priority, or amount
23 of any claim against the Debtors and their estates.

25 *[Remainder of page intentionally left blank]*

27 DOCS_NY:42662.4 20375/001

28 **MOTION FOR ORDER AUTHORIZING AND
APPROVING COOPERATION AGREEMENT –
Page 18**

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CONCLUSION

WHEREFORE, for all of the foregoing reasons, and such additional reasons as may be advanced at or prior to the hearing regarding this Motion, the Debtors respectfully request that the court enter an order (i) authorizing the Debtors to enter into and honor the terms and conditions of the Cooperation Agreement and (ii) granting such other and further relief as may be just and proper under the circumstances.

Dated: March 26, 2021

BUSH KORNFELD LLP

/s/ Thomas A. Buford

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DOCS NY:42662.4 20375/001

MOTION FOR ORDER AUTHORIZING AND APPROVING COOPERATION AGREEMENT – Page 19

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